

MAY 17 2010

Effective Date

OHIO E.P.A.

MAY 17 2010

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

James H. Croston, Jr.  
72046 Cooper Road  
Radcliff, Ohio 45695

DIRECTOR'S FINAL FINDINGS AND ORDERS

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

Respondent,

By:  Date: 5-17-2010

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to James H. Croston, Jr. (Respondent) pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) Chapter 6109 and § 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of the Wagon Wheel public water system (PWS) shall in any way alter the obligations of the Respondent under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 6109 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA (Director) has determined the following findings:

1. Jerry Timmons has been the owner of the PWS at the Wagon Wheel Mobile Home Park (Wagon Wheel) since approximately October 1980; Respondent operated Wagon Wheel and its PWS under a land contract from January 2008 through December 31, 2009.
2. These Orders are being issued to Respondent to address the Wagon Wheel PWS violations which occurred during his operations under the land contract.
3. Jerry Timmons currently owns and operates the PWS at Wagon Wheel, which is

also a "community water system" as defined by ORC § 6109.01 and Ohio Administrative Code (OAC) Rule 3745-81-01.

4. The PWS (PWS ID# 6502812) is located at 13380 Tenny Road, Mount Sterling (Pickaway County), Ohio, 43143.
5. The PWS obtains its drinking water from a "ground water" source as defined by OAC Rule 3745-81-01 and serves a population of 117 persons.
6. On March 10, 2003, the PWS was designated by the Director as a Class A PWS in accordance with OAC Rule 3745-7-03.
7. In accordance with OAC Rule 3745-7-02(A)(1), each person owning or operating a PWS, shall designate one or more operator of record to oversee the technical operation of the PWS or each water treatment plant and distribution system within the PWS. Each operator of record shall have a valid certification of a class equal to or greater than the classification of the PWS, distribution system or water treatment plant.
8. In violation of OAC Rule 3745-7-02(A)(1), Respondent failed to designate an operator of record with a valid Class A certification or above to oversee the technical operation of the PWS from approximately January 1 to November 17, 2008 and May 27 to September 14, 2009.
9. Respondent passed his Class A operator examination on February 7, 2007, receiving his Operator in Training certification; his Class A certificate was issued on August 10, 2009 and he became Operator of Record for the PWS on September 14, 2009, returning the PWS to compliance.
10. In accordance with ORC § 6109.12, every owner or operator of a PWS shall have analyses of the water made at such intervals and in such manner as may be ordered by Ohio EPA. Records of the results of such analyses shall be maintained and reported as required by Ohio EPA.
11. In accordance with OAC Rule 3745-83-01(I)(1), the owner or operator of a PWS shall prepare an operation report for each month (MOR) of operation on forms acceptable to the Director.
12. In accordance with OAC Rule 3745-83-01(I)(2), the MOR shall be signed by the operator in responsible charge, designated in accordance with OAC Rule 3745-7-02, and submitted to the district office no later than the tenth of the month following the month for which the report was prepared.
13. In violation of OAC Rule 3745-83-01(I)(2), Respondent failed to submit signed MORs by the tenth day of the month for the months of May 2009, June 2009 and July 2009.

14. In accordance with OAC Rule 3745-81-23(E)(1), ground water systems shall take and analyze one sample at each sampling point during each compliance period for arsenic to determine compliance with the arsenic maximum contaminant level (MCL) in OAC Rule 3745-81-11(B).
15. In accordance with OAC Rules 3745-81-23, 3745-81-24 and 3745-81-26, the Director issued chemical contaminant monitoring schedules for the PWS for the following compliance periods:
  - a. The 2008 monitoring schedule was issued on January 1, 2008 for the compliance period that began on January 1, 2008 and ended on December 31, 2008; and
  - b. The 2009 monitoring schedule was issued on or about January 1, 2009 for the compliance period that began on January 1, 2009 and ended on December 31, 2009.

Pursuant to these monitoring schedules, Respondent was required to monitor for arsenic quarterly.

16. In accordance with OAC 3745-81-11(B), the MCL for arsenic is 0.010 milligrams per liter (mg/L).
17. In accordance with OAC Rule 3745-81-23(H)(2), for PWSs which are conducting monitoring at a frequency greater than annual, compliance with the MCL for arsenic is determined by a running annual average (RAA) at each sampling point. The PWS will not be considered in violation of the MCL until it has completed one year of quarterly sampling. If a PWS fails to collect the required number of samples, compliance with the MCL (average concentration) will be based on the total number of samples collected.
18. In violation of OAC Rule 3745-81-11(B), the PWS exceeded the arsenic MCL during the October 1 to December 31, 2006 monitoring period with a RAA of 0.012 mg/L and during the July 1 to September 30, 2007 monitoring period with a RAA of 0.011 mg/L.
19. In violation of OAC 3745-81-23 and the 2009 monitoring schedule, Respondent failed to monitor for arsenic during the April 1 to June 30, 2009 monitoring period.
20. In accordance with OAC Rule 3745-81-21(A)(1)(a), a community water system serving a population less than or equal to one thousand persons shall monitor for total coliforms at a minimum monitoring frequency of 1 sample per month.
21. In violation of OAC Rule 3745-81-21(A)(1)(a), Respondent failed to monitor for total coliform during the month of February 2008.
22. On December 9, 2008, Respondent signed a Bilateral Compliance Agreement

(BCA) with Ohio EPA, which was triggered by arsenic MCL violations, total coliform monitoring violations and arsenic results fluctuating between non-detect and 19 micrograms per liter.

23. The December 9, 2008 BCA stated that the arsenic fluctuation should be investigated to determine if it was related to raw water levels and/or sampling technique. Under Item No. 5 of the BCA Respondent agreed to:

Investigate fluctuations in arsenic levels and prepare a strategy to comply with the arsenic maximum contaminant level consistently and reliably. This investigation should include collecting monthly samples for a period of 12 months at all raw water sources and the entry point. Within 45 days of completion of sampling, provide Ohio EPA with a report summarizing results and a preferred strategy to maintain arsenic level at the entry point to below the maximum contaminant level.

24. Respondent has not collected monthly raw water and entry point samples to evaluate arsenic levels for a twelve month period as agreed upon in the December 9, 2008 BCA. Respondent also has not submitted a report describing a preferred strategy to maintain compliance with the arsenic MCL.
25. In accordance with OAC Rule 3745-83-01(C)(1), all community PWSs shall maintain a minimum of at least two-tenths mg/L free chlorine or one mg/L combined chlorine measured at representative points in the distribution system.
26. As a result of complaints, monitoring was performed during Limited Scope Site Visits (LSSVs) by Ohio EPA on April 16, 2008, June 10, 2008, June 13, 2008 and June 26, 2008, which documented that Respondent was in violation of OAC Rule 3745-83-01(C)(1) by not meeting the minimum free or combined chlorine residual in the distribution system.
27. In violation of OAC Rule 3745-83-07(C)(1), daily chlorine residual results for the PWS recorded on MORs submitted by Respondent for the months of June 2008, November 2008, January 2009 and April 2009 document either free and combined chlorine residuals below the minimum required or the failure to sample free or combine chlorine from the distribution system.
28. Each violation cited above represents a separate violation of ORC § 6109.31.

## V. ORDERS

1. Respondent shall pay the amount of seven thousand, seven hundred fifty dollars (\$7,750.00) in settlement of Ohio EPA's claim for administrative penalties, which may be assessed pursuant to ORC § 6109.33. Within thirty (30) days of the effective date of these Orders, payment to Ohio EPA shall be made by an official check, made payable to the "Treasurer, State of Ohio" for seven thousand, seven

hundred and fifty dollars (\$7,750.00). The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA  
Office of Fiscal Administration  
P.O. Box 1049  
Columbus, Ohio 43216-1049

#### **VI. TERMINATION**

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's DDAGW acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete." This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For purposes of these Orders, a responsible official is as defined in OAC Rule 3745-33-03(E).

#### **VII. OTHER CLAIMS**

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to the operation of Respondent's PWS.

#### **VIII. OTHER APPLICABLE LAWS**

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

#### **IX. RESERVATION OF RIGHTS**

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance with these Orders and/or for the violations described herein. Nothing contained herein shall be construed to prevent

Ohio EPA from exercising its lawful authority to require Respondent to perform additional activities pursuant to ORC Chapter 6109 or any other applicable law in the future. Nothing herein shall restrict the right of Respondent to raise any administrative, legal or equitable claim or defense with respect to such further action which Ohio EPA may seek to require of Respondent. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

#### **X. APPEAL RIGHTS**

You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission pursuant to ORC § 3745.04. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00, made payable to "Treasurer, State of Ohio," which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission  
309 South Fourth Street, Room 222  
Columbus, OH 43215

#### **XI. EFFECTIVE DATE**

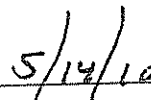
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's Journal.

**IT IS SO ORDERED:**

**Ohio Environmental Protection Agency**



Chris Korleski, Director



Date